



February 20, 2004

ENGROSSED SENATE BILL No. 295

DIGEST OF SB 295 (Updated February 11, 2004 6:56 pm - DI 92)

Citations Affected: IC 14-25; IC 14-25.5; IC 14-26; IC 14-27; IC 14-28; IC 14-29.

Synopsis: Water issues. Specifies that water may be diverted from Lake Michigan only if the diversion is approved by the governor of each Great Lakes state under federal law. Restates enforcement and penalty provisions for violations under the jurisdiction of the division of water of the department of natural resources (department). Changes certain violations from a Class C infraction to a Class B infraction. Requires the owner of a dam to notify the department of the sale of the dam. Allows a property owner or an individual who lives downstream from a dam over which the department does not have jurisdiction to request the department to investigate whether the dam is a high hazard structure if the individual believes that the failure of the dam may cause loss of life or damage to the person's home or other structures. Provides that if the department's investigation determines that the dam's failure may cause loss of life or damage to certain structures, the dam is subject to the department's jurisdiction. Exempts coal mine dams that are regulated under Indiana's surface coal mining laws and federal law from the procedure.

Effective: July 1, 2004.

Landske, Lewis, Bray

(HOUSE SPONSORS — BISCHOFF, HOFFMAN, POND)

January 8, 2004, read first time and referred to Committee on Natural Resources.
January 12, 2004, reported favorably — Do Pass.
January 26, 2004, read second time, amended, ordered engrossed.
January 27, 2004, engrossed.
January 29, 2004, read third time, passed. Yeas 46, nays 0.

HOUSE ACTION

February 4, 2004, read first time and referred to Committee on Agriculture, Natural Resources and Rural Development.
February 12, 2004, amended, reported — Do Pass.
February 19, 2004, recommitted to Committee on Ways and Means.

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ES 295—LS 7042/DI 71+



February 20, 2004

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 295

A BILL FOR AN ACT to amend the Indiana Code concerning
natural and cultural resources.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 14-25-1-11 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 11. (a) The general
3 assembly finds that a diversion of water out of the Great Lakes will
4 impair or destroy the Great Lakes. The general assembly further finds
5 that the prohibition of a diversion of water from the Great Lakes is
6 consistent with the mandate of the Preamble to and Article 14, Section
7 1 of the Constitution of the State of Indiana, the United States
8 Constitution, and the federal legislation according to which Indiana
9 was granted statehood.

10 (b) Water may not be diverted from that part of the Great Lakes
11 drainage basin within Indiana ~~for use in a state outside the basin~~, unless
12 the diversion is approved by the governor of each Great Lakes state
13 **under 42 U.S.C. 1962d-20 (Water Resources Development Act).**

14 (c) **The commission shall adopt rules necessary to implement**
15 **this section.**

16 SECTION 2. IC 14-25.5-4-6, AS ADDED BY P.L.145-2002,
17 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2004]: Sec. 6. **Except as provided in IC 14-26-7-8, IC 14-27-6-52, IC 14-29-1-3, IC 14-29-7-25, and IC 14-29-8-5,** a person who ~~knowingly~~ violates **an article enforced under** this article commits a Class B infraction. Each day a violation occurs is a separate infraction.

SECTION 3. IC 14-26-2-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 19. ~~(a) The department may seek and a court having jurisdiction may grant injunctive relief under IC 14-25.5-4 for the violation of this chapter. The plaintiff in such a cause is not required to give bond; and after the filing of the action and the service of notice all matters involved in the action shall be held in abeyance until the action is tried and determined.~~

~~(b) If a defendant continues to violate this chapter after the service of notice of the action and before trial, the plaintiff is entitled, upon a verified showing of the acts on the part of the defendant, to a temporary restraining order without notice. The temporary restraining order is effective until the cause has been tried and determined.~~

SECTION 4. IC 14-26-2-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 20. The department may bring an action ~~in any court having jurisdiction under IC 14-25.5-4~~ for damages caused by a person who violates this chapter.

SECTION 5. IC 14-26-2-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 21. A person who violates this chapter commits a ~~Class C~~ **Class B** infraction.

SECTION 6. IC 14-26-2-22, AS AMENDED BY P.L.24-2001, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 22. ~~(a) In addition to other penalties prescribed by this chapter or IC 13-2-11.1 (before its repeal), the director may impose a civil penalty under IC 4-21-5, not to exceed one thousand dollars (\$1,000), on a person who violates any of the following:~~

~~(1) Section 6, 7, 8, 9, 10, 11, 12, 13, 18, or 23 of this chapter.~~

~~(2) A rule relating to section 6, 7, 8, 9, 10, 11, 12, 13, 18, or 23 of this chapter.~~

~~(3) A permit under this chapter.~~

~~(b) Each day a violation continues after a civil penalty is imposed under subsection (a) constitutes a separate violation.~~

~~(c) Civil penalties imposed under this section shall be deposited in the state general fund. IC 14-25.5-4.~~

SECTION 7. IC 14-26-6-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. A person who lowers the water level of a lake more than twelve (12) inches below the high water mark established by the dam or other artificial device creating

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the lake commits a ~~Class C~~ **Class B** infraction.

SECTION 8. IC 14-27-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. A person who rides or drives upon or over a levee constructed under law, except for the purpose of:

- (1) passing over the levee:
 - (A) at a public or private crossing; or
 - (B) upon a part of a public highway; or
- (2) inspection or repair;

commits a ~~Class C~~ **Class B** infraction.

SECTION 9. IC 14-27-7-5, AS AMENDED BY P.L.148-2002, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. ~~(a)~~ If the department finds that a dike, floodwall, levee, or appurtenance is:

- (1) not sufficiently strong;
- (2) not maintained in a good and sufficient state of repair or operating condition; or
- (3) unsafe and dangerous to life or property;

the department shall issue a notice of violation to the owner of the dike, floodwall, levee, or appurtenance ~~to make or cause to be made, at the owner's expense, the maintenance, alteration, repair, reconstruction, change in construction or location, or removal that the department considers reasonable and necessary.~~

~~(b) The department shall limit in the notice the time for compliance with the notice based on the seriousness of the circumstances involving the structure.~~

~~(c) The owner shall comply with the notice: under IC 14-25.5-2.~~

SECTION 10. IC 14-27-7.5-7, AS ADDED BY P.L.148-2002, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 7. **(a)** The owner of a structure shall maintain and keep the structure in the state of repair and operating condition required by the following:

- (1) The exercise of prudence.
- (2) Due regard for life and property.
- (3) The application of sound and accepted technical principles.

(b) The owner of a structure who has been notified that the structure is subject to the department's jurisdiction under this chapter shall notify the department in writing of the sale or other transfer of ownership of the structure. The notice must include the name and address of the new owner of the structure.

SECTION 11. IC 14-27-7.5-11, AS ADDED BY P.L.148-2002, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2004]: Sec. 11. (a) If the department finds that a structure is:

- (1) not sufficiently strong;
- (2) not maintained in a good and sufficient state of repair or operating condition;
- (3) not designed to remain safe during infrequent loading events;
- or
- (4) unsafe and dangerous to life and property;

the department may issue a notice of violation ~~by letter to the owner of the structure. The notice may require the owner of the structure to make or cause to be made, at the owner's expense, the maintenance, alteration, repair, reconstruction, change in construction or location, or removal that the department considers reasonable and necessary.~~

(b) ~~The department shall limit in the notice the time for compliance with the notice based on the seriousness of the circumstances involving the structure.~~

(c) ~~The owner shall comply with the notice. under IC 14-25.5-2.~~

SECTION 12. IC 14-27-7.5-16 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 16. (a) A property owner, the owner's representative, or an individual who resides downstream from a structure:

- (1) over which the department does not have jurisdiction under this chapter; and
- (2) that the property owner, the owner's representative, or the individual believes would cause a loss of life or damage to the person's home, industrial or commercial building, public utility, major highway, or railroad if the structure fails;

may request in writing that the department declare the structure a high hazard structure.

(b) If the department receives a request under subsection (a), the department shall:

- (1) investigate the structure and the area downstream from the structure;
- (2) notify the owner of the structure that the structure is being investigated;
- (3) review written statements and technical documentation from any interested party; and
- (4) after considering the available information, determine whether or not the structure is a high hazard structure.

(c) The department shall, under IC 4-21.5-3-5(a)(5), issue a written notice of the department's determination under subsection (b) to:

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- (1) the individual who requested the determination; and
 (2) the owner of the structure that is the subject of the request.

(d) Either:

- (1) the individual who requested a determination; or
 (2) the owner of the structure that is the subject of the request;

may request an administrative review under IC 4-21.5-3 within thirty (30) days after receipt of the written determination.

(e) If the department determines that a structure is a high hazard structure under subsection (b), the provisions of this chapter concerning high hazard structures apply to the structure.

(f) The department may not determine that a structure is a high hazard structure under this section if the structure is subject to:

- (1) the department's regulation under IC 14-34; or
 (2) regulation under the federal Mine Safety and Health Act of 1977.

SECTION 13. IC 14-28-1-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 24. (a) This section does not apply to the reconstruction of a residence located in a boundary river floodway.

(b) A person may not begin the reconstruction of an abode or a residence that:

- (1) is located in a floodway; and
 (2) is substantially damaged (as defined in 44 CFR 59.1, as in effect on January 1, 1993) by a means other than floodwater;

unless the person has obtained a permit under this section or section 26.5 of this chapter.

(c) A person who desires to reconstruct an abode or a residence described in subsection (b) must file with the director a verified written application for a permit accompanied by a nonrefundable fee of fifty dollars (\$50). An application submitted under this section must do the following:

- (1) Set forth the material facts concerning the proposed reconstruction.
 (2) Include the plans and specifications for the reconstruction.

(d) The director may issue a permit to an applicant under this section only if the applicant has clearly proven all of the following:

- (1) The abode or residence will be reconstructed:
 (A) in the area of the original foundation and in substantially the same configuration as the former abode or residence; or
 (B) in a location that is, as determined by the director, safer

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- 1 than the location of the original foundation.
- 2 (2) The lowest floor elevation of the abode or residence as
- 3 reconstructed, including the basement, will be at or above the one
- 4 hundred (100) year flood elevation.
- 5 (3) The abode or residence will be designed or modified and
- 6 adequately anchored to prevent flotation, collapse, or lateral
- 7 movement of the structure resulting from hydrodynamic and
- 8 hydrostatic loads, including the effects of buoyancy.
- 9 (4) The abode or residence will be reconstructed with materials
- 10 resistant to flood damage.
- 11 (5) The abode or residence will be reconstructed by methods and
- 12 practices that minimize flood damages.
- 13 (6) The abode or residence will be reconstructed with electrical,
- 14 heating, ventilation, plumbing, and air conditioning equipment
- 15 and other service facilities that are designed and located to
- 16 prevent water from entering or accumulating within the
- 17 components during conditions of flooding.
- 18 (7) The abode or residence, as reconstructed, will comply with the
- 19 minimum requirements for floodplain management set forth in 44
- 20 CFR Part 60, as in effect on January 1, 1993.
- 21 (e) When granting a permit under this section, the director may
- 22 establish and incorporate into the permit certain conditions and
- 23 restrictions that the director considers necessary for the purposes of this
- 24 chapter.
- 25 (f) A permit issued by the director under this section is void if the
- 26 reconstruction authorized by the permit is not commenced within two
- 27 (2) years after the permit is issued.
- 28 (g) The director shall send a copy of each permit issued under this
- 29 section to each river basin commission organized under:
- 30 (1) IC 14-29-7 or IC 13-2-27 (before its repeal); or
- 31 (2) IC 14-30-1 or IC 36-7-6 (before its repeal);
- 32 that is affected by the permit.
- 33 (h) The person to whom a permit is issued under this section shall
- 34 post and maintain the permit at the site of the reconstruction authorized
- 35 by the permit.
- 36 (i) A person who:
- 37 (1) begins the reconstruction of an abode or a residence in
- 38 violation of subsection (b);
- 39 (2) violates a condition or restriction of a permit issued under this
- 40 section; or
- 41 (3) fails to post and maintain a permit at a reconstruction site in
- 42 violation of subsection (h);

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commits a ~~Class C~~ **Class B** infraction. Each day that the person is in violation of subsection (b), the permit, or subsection (h) constitutes a separate infraction.

SECTION 14. IC 14-28-1-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 25. (a) A person who desires to reconstruct an abode or a residence that:

(1) is located in a floodway; and

(2) is not substantially damaged (as defined in 44 CFR 59.1, as in effect on January 1, 1997) by a means other than floodwater;

is not required to obtain a permit from the department for the reconstruction of the abode or residence if the reconstruction will meet the requirements set forth in 44 CFR Part 60, as in effect on January 1, 1997.

(b) A person who reconstructs an abode or a residence described in subsection (a) in a way that does not comply with the requirements referred to in subsection (a) commits a ~~Class C~~ **Class B** infraction.

SECTION 15. IC 14-28-1-33 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 33. (a) A person who fails to:

(1) comply with the requirements of section 20(1) of this chapter; or

(2) obtain a permit under section 22 of this chapter;

commits a ~~Class C~~ **Class B** infraction.

(b) Each day a person violates section 20(1) or 22 of this chapter constitutes a separate infraction.

SECTION 16. IC 14-28-1-34 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 34. A person who fails to comply with section 22(i) of this chapter commits a ~~Class D~~ **Class B** infraction. Each day a person violates section 22(i) of this chapter constitutes a separate infraction.

SECTION 17. IC 14-28-1-35 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 35. The commission may ~~maintain an action to~~ enjoin a violation of this chapter **under IC 14-25.5-2.**

SECTION 18. IC 14-28-1-36 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 36. ~~(a)~~ In addition to other penalties prescribed by this chapter, the director may impose a civil penalty under ~~IC 4-21.5, not to exceed one thousand dollars (\$1,000), on a person who violates any of the following:~~

(1) Section 20, 22, 27, or 29 of this chapter;

(2) A rule relating to section 20, 22, 27, or 29 of this chapter;

(3) A permit issued under this chapter.

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1 (b) Each day a violation continues after a civil penalty is imposed
2 under subsection (a) constitutes a separate violation.

3 (c) Civil penalties imposed under this section shall be deposited in
4 the state general fund. **IC 14-25.5-4.**

5 SECTION 19. IC 14-29-4-9 IS AMENDED TO READ AS
6 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9. (a) A person who
7 violates this chapter commits a ~~Class C~~ **Class B** infraction.

8 (b) Each day of continuing violation after conviction of the offense
9 constitutes a separate offense.

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COMMITTEE REPORT

Madam President: The Senate Committee on Natural Resources, to which was referred Senate Bill No. 295, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 295 as introduced.)

WEATHERWAX, Chairperson

Committee Vote: Yeas 6, Nays 0.

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SENATE MOTION

Madam President: I move that Senate Bill 295 be amended to read as follows:

Page 4, line 7, after "department" insert **"in writing"**.

Page 4, line 41, delete "An" and insert **"A property owner, the owner's representative, or an"**.

Page 5, line 2, delete "and".

Page 5, line 3, after "that the" insert **"property owner, the owner's representative, or the"**.

Page 5, line 4, delete "individual's" and insert **"person's"**.

Page 5, line 4, after "home" insert **", industrial or commercial building, public utility, major highway, or railroad"**.

Page 5, line 4, delete "failed" and insert **"fails"**.

Page 5, line 5, after "request" insert **"in writing"**.

Page 5, line 11, after "(2)" insert **"notify the owner of the structure that the structure is being investigated;**

(3) review written statements and technical documentation from any interested party; and

(4) after considering the available information,"

Page 5, line 11, after "whether" insert **"or not"**.

(Reference is to SB 295 as printed January 13, 2004.)

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Agriculture, Natural Resources and Rural Development, to which was referred Senate Bill 295, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 2, delete "14-29-7-25, and 14-29-8-5," and insert **"IC 14-29-7-25, and IC 14-29-8-5,"**.

Page 2, line 3, strike "knowingly".

Page 2, line 3, after "violates" insert **"an article enforced under"**.

Page 2, line 23, delete "knowingly".

Page 2, delete lines 38 through 41.

Page 3, line 2, delete "knowingly".

Page 3, line 7, delete "knowingly".

Page 3, delete lines 31 through 40.

Page 4, line 7, after "structure" insert **"who has been notified that the structure is subject to the department's jurisdiction under this chapter"**.

Page 4, delete lines 29 through 38.

Page 5, line 3, after "chapter;" insert **"and"**.

Page 5, line 8, after "writing" insert **"that"**.

Page 5, line 8, delete "to".

Page 5, line 20, after "shall" insert **", under IC 4-21.5-3-5(a)(5),"**.

Page 5, line 29, delete "IC 4-21.5-3-6" and insert **"IC 4-21.5-3"**.

Page 5, between lines 33 and 34, begin a new paragraph and insert:
"(f) The department may not determine that a structure is a high hazard structure under this section if the structure is subject to:

- (1) the department's regulation under IC 14-34; or**
- (2) regulation under the federal Mine Safety and Health Act of 1977."**

Page 7, line 10, delete "knowingly:" and insert **":"**.

Page 7, line 30, delete "knowingly".

Page 7, delete lines 34 through 39.

Page 7, line 42, delete "knowingly".

Page 8, line 9, delete "knowingly".

Page 8, delete lines 28 through 33.

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Page 8, line 36, delete "knowingly".
and when so amended that said bill do pass.

(Reference is to SB 295 as reprinted January 27, 2004.)

BISCHOFF, Chair

Committee Vote: yeas 12, nays 0.

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